

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROSS UNIVERSITY SCHOOL OF  
MEDICINE, LTD.,

09 Civ. 1410 (KAM) (RLM)

Plaintiff,

– against –

BROOKLYN-QUEENS HEALTH CARE,  
INC. and WYCKOFF HEIGHTS MEDICAL  
CENTER,

Defendants.

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**PLAINTIFF ROSS UNIVERSITY'S RESPONSE TO  
DEFENDANTS' ADDITIONAL MATERIAL & DISPUTED FACTS**

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*Counsel for Plaintiff Ross University School  
of Medicine, Ltd.*

Plaintiff Ross University School of Medicine, Ltd., by its attorneys Baker & Hostetler LLP, submits its response to Defendants' Additional Material and Disputed Facts set forth in their Response to Plaintiff's Local Rule 56.1 Statement of Material Facts:

1. On December 28, 2006, Ross sent a wire transfer of \$5,000,000 to a J.P. Morgan Chase bank account held exclusively by Caritas. *See* Roeber Opp. Dec., Exh. 10, at BQHC 07619 (Caritas document reporting receipt of \$5 million from Ross on December 28, 2006); *see also id.* at Exh. 11, at Ross 008528 (December 22, 2006 e-mail to Ross with instructions to wire the \$5 million prepayment, with specific account information for Caritas's account at J.P. Morgan Chase); *id.* at Exh. 12, at Ross 0538 (Ross bank statement showing December 28, 2006 transfer of \$5 million to Caritas); *id.* at Exh. 13, at Ross 0539 (Ross financial record reflecting December 28, 2006 transfer of \$5 million to J.P. Morgan bank account held by Caritas).

**RESPONSE:** Disputed. This paragraph is not supported by the cited material, which shows only that Ross sent a wire transfer to an account specified by Julius Romero, Roeber Opp. Dec. Ex. 11 at Ross 008528 (December 22, 2006 e-mail to Ross with wire transfer instructions and account information), who defendants, in two affidavits submitted to the U.S. District Court for the Southern District of Florida, averred was "Assistant Vice President for Medical Education for Defendant Brooklyn Queens Healthcare, Inc. ("BQHC")" and "[in] [his] capacity as Assistant Vice President for Medical Education for BQHC . . . overs[aw] the clinical clerkship programs at Caritas' two hospitals and at Wyckoff," Pl.'s Stmt. of Add'l Material Facts, App. 1, Declaration of Julius Romero, ¶3, ¶5; App. 66, Second Declaration of Julius Romero, ¶2. Further disputed that the bank account was "held exclusively by Caritas." Pl.'s Stmt. of Add'l Material Facts, App. 54, McDonald Dep. Ex. 12 at BQHC06981 (showing \$4.5 million transferred from Caritas to Wyckoff on December 29, 2006); App. 54, McDonald Dep. Ex 12 (more than \$17 million dollars transferred from Caritas to Wyckoff in late 2006 and early 2007); App. D, McDonald Dep. 64:13-25 (testimony of Harold McDonald that "[f]unds were being moved around to cover the cash needed for a specific point in time. So there were Caritas funds going to pay for Wyckoff liabilities and Wyckoff funds going to pay for Caritas liabilities

. . . . [W]hichever entity had cash, those funds were being used to pay bills regardless of the entity whose bills they were.”).

2. On December 5, 2007, Ross sent a wire transfer of \$3,776,455 to a J.P. Morgan Chase bank account held exclusively by Caritas. *See* Roeber Opp. Dec., Exh. 14, at Ross 0548-0549 (Ross bank records showing December 5, 2007 transfer of \$3,776,455 to Caritas); *see also id.* at Exh. 15, at BQHC 03883 (minutes from the December 20, 2007 meeting of Wyckoff’s Board of Trustees noting that Caritas received \$3.7 million from Ross); *id.* at Exh. 16, at Ross 002210 (November 30, 2007 email to Ross with instructions to wire one payment to Caritas and a separate payment to Wyckoff, pursuant to Ross’s separate agreements for clerkships at Caritas and Wyckoff).

**RESPONSE:** Disputed. This paragraph is not supported by the cited material, which shows only that Ross sent a wire transfer as directed by Claire Mullally to the same account identified by Julius Romero. Roeber Opp. Dec. Ex. 16 at Ross 002210 (November 30, 2007 email from Mullally with payment instructions). Further, Mullally is identified in the signature block of the cited material as an attorney for “Brooklyn Queens Health Care, Inc.” and “Wyckoff Heights Medical Center.” *See id.* Further disputed that the bank account was “held exclusively by Caritas.” Pl.’s Stmt. of Add’l Material Facts, App. 54, McDonald Dep. Ex. 12 at BQHC06981 (showing \$4.5 million transferred from Caritas to Wyckoff on December 29, 2006); App. 54, McDonald Dep. Ex. 12 (more than \$17 million dollars transferred from Caritas to Wyckoff in late 2006 and early 2007); App. D, McDonald Dep. 64:13-25 (testimony of Harold McDonald that “[f]unds were being moved around to cover the cash needed for a specific point in time. So there were Caritas funds going to pay for Wyckoff liabilities and Wyckoff funds going to pay for Caritas liabilities . . . . [W]hichever entity had cash, those funds were being used to pay bills regardless of the entity whose bills they were.”).

3. On February 28, 2008, Ross sent a wire transfer of \$3,000,000 to a J.P. Morgan Chase bank account held exclusively by Caritas. *See* Roeber Opp. Dec., Exh. 17, at Ross 0551-0552 (Ross bank records showing February 28, 2008 transfer of \$3 million to J.P. Morgan Chase

account held by Caritas); *see also id.* at Exh. 18, at Ross 0553-0554 (Ross emails with instructions to complete the February 28, 2008 wire transfer).

**RESPONSE:** Disputed. This paragraph is not supported by the cited material, which shows only that Ross sent a wire transfer to an account specified by Julius Romero, Roeber Opp. Dec. Ex. 18 at Ross 0553 (February 2008 emails with wire transfer instructions and account information), who defendants, in two affidavits submitted to the U.S. District Court for the Southern District of Florida, averred was “Assistant Vice President for Medical Education for Defendant Brooklyn Queens Healthcare, Inc. (“BQHC”)” and “[in] [his] capacity as Assistant Vice President for Medical Education for BQHC . . . overs[aw] the clinical clerkship programs at Caritas’ two hospitals and at Wyckoff,” Pl.’s Stmt. of Add’l Material Facts, App. 1, Declaration of Julius Romero, ¶3; ¶5, App. 66, Second Declaration of Julius Romero, ¶2. Further disputed that the bank account was “held exclusively by Caritas.” Pl.’s Stmt. of Add’l Material Facts, App. 54, McDonald Dep. Ex. 12 at BQHC06981 (showing \$4.5 million transferred from Caritas to Wyckoff on December 29, 2006); App. 54, McDonald Dep. Ex 12 (more than \$17 million dollars transferred from Caritas to Wyckoff in late 2006 and early 2007); App. D, McDonald Dep. 64:13-25 (testimony of Harold McDonald that “[f]unds were being moved around to cover the cash needed for a specific point in time. So there were Caritas funds going to pay for Wyckoff liabilities and Wyckoff funds going to pay for Caritas liabilities . . . . [W]hichever entity had cash, those funds were being used to pay bills regardless of the entity whose bills they were.”).

4. On April 1, 2008 Ross sent a wire transfer of \$1,000,000 to a J.P. Morgan Chase bank account held exclusively by Caritas. *See* Roeber Opp. Dec., Exh. 19, at Ross 0557-0558 (Ross bank records showing April 1, 2008 transfer of \$1 million to J.P. Morgan Chase account held by Caritas); *see also id.* at Exh. 20, at Ross 0559 (Ross emails with instructions to complete the April 1, 2008 wire transfer).

**RESPONSE:** Disputed. This paragraph is not supported by the cited material, which shows only that Ross sent a wire transfer to the same account specified by Julius Romero, Roeber Opp. Dec. Ex. 18 at Ross 0553 (February 2008 emails with wire transfer instructions and account information), who defendants, in two affidavits submitted to the U.S. District Court for the Southern District of Florida, averred was “Assistant Vice President for Medical Education for Defendant Brooklyn Queens Healthcare, Inc. (“BQHC”)” and “[in] [his] capacity as Assistant Vice President for Medical Education for BQHC . . . overs[aw] the clinical clerkship programs at Caritas’ two hospitals and at Wyckoff,” Pl.’s Stmt. of Add’l Material Facts, App. 1, Declaration of Julius Romero, ¶3, ¶5; App. 66, Second Declaration of Julius Romero, ¶2. Further disputed that the bank account was “held exclusively by Caritas.” Pl.’s Stmt. of Add’l Material Facts, App. 54, McDonald Dep. Ex. 12 at BQHC06981 (showing \$4.5 million transferred from Caritas to Wyckoff on December 29, 2006); App. 54, McDonald Dep. Ex 12 (more than \$17 million dollars transferred from Caritas to Wyckoff in late 2006 and early 2007); App. D, McDonald Dep. 64:13-25 (testimony of Harold McDonald that “[f]unds were being moved around to cover the cash needed for a specific point in time. So there were Caritas funds going to pay for Wyckoff liabilities and Wyckoff funds going to pay for Caritas liabilities . . . . [W]hichever entity had cash, those funds were being used to pay bills regardless of the entity whose bills they were.”).

Respectfully submitted,

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